

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JOHN PATRICK R.,

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2011010592

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on May 31, 2011, and July 8, 2011, in Torrance, California.

John Patrick R.¹ (Claimant) was not present at hearing; he was represented by his mother, Lucia R. (Mother). Antoinette Perez, Program Manager, represented Harbor Regional Center (Service Agency).

This matter was consolidated with the case of *In the Matter of Zachary R. v. Harbor Regional Center*, OAH No. 2011010593, and these two cases were heard together by agreement of both parties.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on July 8, 2011.

¹ The surnames of Claimant and his family have been omitted to protect their privacy.

ISSUE

The parties stipulated that the following issue is to be decided by the ALJ:

Should the Service Agency be required to fund structured program during school breaks for Claimant and/or increase sibling respite rate hours?

FACTUAL FINDINGS

1. Claimant is a 16-year-old male who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.² He has diagnoses of autism and mental retardation. Claimant lives with his brother Zachary, and his parents. Zachary is also a client of the Service Agency on the basis of autism. Claimant is non-verbal and is not toilet-trained. He cannot bathe or shower himself. Mother has to assist Claimant to complete self-care grooming tasks, as well clean up after bowel movements. Claimant displays significant need for assistance in all areas of daily living. He displays severe aggressive behaviors in the home and school settings. He exhibits self-injurious and violent behaviors. His regular tantrums include physical aggression towards others. He is often non-compliant and shows a complete lack of safety awareness. He displays a number of self-stimulatory behaviors and elopes when out in the community. He is able to follow some directions if prompted several times. Claimant does present with good overall motor skills.

2. Claimant currently receives 283 hours of In Home Support Services (IHSS). Zachary receives 195 hours of IHSS. Mother is the IHSS worker for both sons. Together with his brother, Claimant receives 24 hours of sibling rate respite per month from the Service Agency. Claimant also receives services through his school district.

3. Claimant requested the Service Agency to fund structured programming for Claimant during the Summer and Winter school breaks. If structured programming were not to be available through the Service Agency, Claimant requested an increase in sibling rate respite to a total of 48 hours per month.

4. On December 17, 2010, the Service Agency denied Claimant's request.

5. Claimant timely appealed the decision.

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

6. The parties agree that Claimant presents behavioral needs. The Service Agency persuasively presented its position that Claimant's needs may be best met through in-home behavior services. Specifically, consistent implementation of behavior management strategies will control Claimant's behaviors and ultimately allow Claimant and his family greater access to the community, including programs in which Claimant would like to participate. This will allow for a more long term solution to Claimant's behavioral issues, and may even allow better interaction with his peers. In line with their position, on April 7, 2011, the Service Agency offered to coordinate a behavioral assessment and thereafter provide appropriate in-home behavior services for Claimant, as well as an increase in sibling rate respite hours to 36 hours per month for a five month period, while the in-home behavior services were being delivered. The additional respite hours were offered to provide additional relief to parents while the in-home behavior services were being delivered, and were contingent on full participation in the clinically recommended behavioral program.

7. Claimant's most recent Individual/Family Services Plan (IFSP),³ dated March 16, 2011, documents as a desired outcome that Claimant will decrease his inappropriate behaviors with consistent behavior management strategies applied by parents. It also states that Claimant will engage in reciprocal interaction with peers in a community/social setting throughout the next year.

8. The Service Agency provided in-home behavior services to Claimant from November 2008 through February 2009 via one of its vendors, Family Behavioral Services. A Summary of Services report, dated October 2009, from Family Behavioral Services, shows that the service led to Claimant's challenging behaviors diminishing. His aggression decreased significantly, from an estimated two to three times per day or more, to one time per week on average. Claimant's elopement also substantially decreased from 100 percent of given opportunities to one time per week. Behavioral services helped Claimant and if consistently implemented, will address his needs. The evidence established that Claimant has and would continue to benefit from behavioral services.

9. Mother feels that a structured program would allow Claimant to interact with peers and help prevent regression of Claimant's behaviors and wants the Service Agency to fund a program through Ability First, a vendor of the Service Agency.

10. Mother points to the fact that the Service Agency previously funded a structured program called Beyond Basics as Extended School Year (ESY). ESY is a service that is provided to clients with extreme behavioral challenges in order to prevent prolonged or permanent regression. Beyond Basics was a full day program utilized during school breaks, typically six to eight hours per day. The Service Agency last funded Beyond Basics in August 2008, prior to the Legislatively-mandated budgetary cuts. In November 2008,

³ Despite use of the term typically associated with early intervention services, the IFSP is actually the Individualized Program Plan (IPP) within the meaning of the Lanterman Act.

Beyond Basics was discontinued because the owner closed the program due to a family tragedy. Mother has been searching for a program similar to Beyond Basics, and due to Claimant's challenging behavioral needs, has had difficulty in finding one, until she found Ability First's program, a program that she feels would meet the same needs as Beyond Basics. However, insufficient evidence was presented showing that the program at Ability First was functionally akin to the previously attended Beyond Basics program, or that the program is designed to address Claimant's needs.

11. The Ability First Summer Vacation Day program is a full day program, from 8:30 a.m. to 5:30 p.m., and runs from the latter part of June through early September. In June 2010, Claimant was accepted on a trial basis into Ability First's program to determine if Claimant would be able to function under the 1:4 staffing ratio at the program. Claimant never started the program. Since it was not established that this program was similar to Beyond Basics and since Mother did not present sufficient details regarding the type of structure offered at the Ability First program, Mother did not establish that this program offers structured activities that would meet Claimant's needs. Rather, Ability First's program appears more like social recreation or, as Service Agency argues, day care services.

Respite

12. Respite services are those that provide family members with temporary relief from the continual care of a person with a disability. Respite is not intended to replace other services, such as behavior modification services, nor was it intended to fund social recreation activities. Claimant's behaviors have not worsened, and his needs or family circumstances have not otherwise changed to warrant an increase in the number of respite hours. The evidence, considered as a whole, reveals that the Service Agency has properly denied Claimant's request for additional respite hours.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. A regional center must develop and implement an “individual program plan” (IPP) for each consumer which specifies the consumer’s needs for services and supports. These services and supports must appear in statements of goals and also specific time-limited objectives in the IPP. Goals and objectives “shall be stated in terms that allow measurement of progress or monitoring of service delivery.” (Welf. & Inst. Code, § 4646.5, sub. (a)(2).)

The IPP must be reviewed, reevaluated and modified no less than once every three years by a planning team composed of regional center staff, the consumer, and (where appropriate) the consumer’s parents, to ascertain whether the planned services have been provided and the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code, § 4646.5, sub. (b).)

3. Welfare and Institutions Code section 4646, subdivision (d) provides:

Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

4. Section 4418.6 provides that respite care may be provided as part of a family care program for the developmentally disabled. Respite care is defined as “...temporary and intermittent care provided for short periods of time.” The purpose of respite, therefore, is generally to give some relief to a parent or caregiver from the ongoing burden of caring for a demanding family member or individual.

5. Claimant has not established that he requires a structured program at this time, or that the program for which he seeks funding is a structured program that meets Claimant’s needs. The information provided at the hearing was insufficient to show that Ability First’s program contains sufficient structured programming to meet Claimant’s current needs. Rather, Ability First’s program appears more like social recreation or day care.

6. Respite services are not intended to provide behavioral services or social recreational services. Evidence of Claimant’s behaviors does not establish that care and supervision needs previously catalogued have changed, warranting an increase in the number of respite service hours.

ORDER

Claimant John Patrick R.'s appeal is denied, and the Service Agency is not required to fund Claimant's request for a structured program and/or additional respite hours.

DATED: July 22, 2011

JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.